IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LODGING) NO.92 OF 2005

Dr.Vishnukant D. Biradar
and another ... Petitioners

versus

Director of Medical Education
and Research, M.S and another ... Respondents

Mr.M.M.Vashi, adv. for petitioners.

Mr.A.A.Kumbhakoni with Ms.Gitanjali Prabhu, adv. for respondent no.1.

Mr.V.M.Thorat, with D.V.Sutar, adv. for intervenors.

CORAM : H.L.GOKHALE AND
S.C.DHARMADHIKARI, JJ.

DATE : 25th January 2005

PC :

1. Heard counsel for parties.

2. Petitioner no.1 is a student who has recently completed MBBS and is seeking admission to a Post Graduate Medical seat. Petitioner no.2 is a practising doctor. The petitioners have filed this petition to challenge separate entrance test to be held for the in-service candidates by the Director of Medical Education who is respondent

no.1 to this petition. The second respondent to this petition is Medical Council of India against whom no prayers are sought by the petitioners. Mr.Vashi seeks to delete respondent no.2. Respondent no.2 stands deleted accordingly. The in-service students have moved a Chamber Summons to join in the proceeding as contesting respondents. By a separate order passed in the said Chamber Summons, we have allowed the same. Mr.Kumbhakoni and Ms.Prabhu have appeared for the first respondent Director of Medical Education and Mr.V.M.Thorat has appeared for the in-service candidates.

3. This petition of fresh graduate students is based on the judgement of the Apex Court in the case of **State of Madhya Pradesh and others Vs. Gopal D. Tirthani and others** reported in (2003)7-SCC-83. Almost a similar controversy was there before the Apex Court in that matter concerning separate examinations being taken for the in-service candidates and the fresh graduate candidates. The State of Madhya Pradesh which was the appellant, pointed out to the Apex Court the necessity to have separate examination for the in-service candidates. It was pointed out that the candidates who are in service have to

work in the rural and tribal areas and, therefore, they have some difficulty in adequately preparing to compete with the fresh graduates. Their interest was also to be taken into consideration, and, therefore, separate examinations were justified. The Apex Court turned down this submission and in terms held that there must be one common entrance test for determining eligibility for post graduation for those who are in-service candidates as well as those who are not in service. That is the clear direction in paragraph 36(2) of the said judgement. The petitioners herein contend that presently some 25% seats are reserved for in-service candidates. As such, the remaining seats are also eroded because of the reservation for all India candidates etc.. It is pointed out that the judgement in M.P.case has been rendered by the Apex Court way back on 20th July 2003. More than a year and a half has gone since then and yet the State Government and the first respondent are proceeding to hold two separate examinations for the in service candidates and the fresh graduate candidates. The notifications in this behalf are annexed to this petition.

4. A notification has been published by the

first respondent Directorate on 26th November 2004 announcing an examination for the Medical P.G.Course which examination is to be held on 30th January 2005. This examination is available for all graduate students for whom eligibility criteria is laid down in the advertisement, which reads as follows :-

> "Eligibility Criteria :-
>
> 1) A candidate must be an Indian national.
>
> 2) A candidate who has passed final MBBS degree examination from a recognised medical college included in the schedule of the Indian Medical Council Act, 1956 and situated in Maharashtra, affiliated to Non-Agricultural Universities established under Maharashtra University Act, 1994 or to the Maharashtra University of Health Sciences, Nashik and who has obtained full registration either from the Medical Council of India or from the Maharashtra Medical Council after completing one year internship training, will be eligible for PGM-CET 2005."

5. A separate notification has been published by the first respondent for the in-service candidates on 8th October 2004 and the examination is to be held on 6th February 2005. Mr.Vashi learned counsel for the petitioners submitted that the number of fresh graduate candidates appearing for this examination is more than 7,300. The candidates who will be appearing

for examination as in-service candidates are just around 118. The number of seats which are available are 992. If 25% of these seats are reserved for the in-service candidates, the seats reserved for them will be 248 i.e. far more than the total number of candidates who are held eligible to appear for this examination. As against this, the number of fresh graduate candidates is far more and the number of seats available to them is much less. This is the reason why now there is insistence that there should not be any separate examination and as directed by the Apex Court, the State Government should proceed to hold a common entrance test. An affidavit-in-reply has been filed by the first respondent Director of Medical Education. Various difficulties have been pointed out therein. It is firstly pointed out that in-service candidates are putting in services in the rural and tribal areas. They are selected by Maharashtra Public Service Commission to work over there. After putting in five years in rural areas and in case of those in tribal areas three years service, these candidates become eligible. Thereafter upon passing a screening test held by a by selection committee, they are selected to appear for this examination. This year their

number is around 118.

6. Along with affidavit-in-reply the brochures published by the first respondent Directorate for the P.G.Medical admissions are annexed. The brochures for the fresh graduate candidates and for the in-service candidates are separate. As far as in-service candidates are concerned, clause 6.5 of this brochure gives various subjects on which the candidates have to prepare. In clause 6.4 they are told that there will be one paper of 3 hours duration containing 200 multiple choice questions. The tentative questions on each subjects are given in above referred clause 6.5. Those subjects and the number of questions marked against them are as follows :-

> "6.5. ... ...
>
> National Health Programme - 50 questions
>
> Social and Preventive Medicine - 30 questions
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> Health Administration - 20 questions
>
> Pharmacology - 10 questions
>
> Pathology - 10 questions
>
> Microbiology - 10 questions
>
> Forensic Medicine - 10 questions

Medicine - 10 questions

Surgery - 10 questions

Paediatrics - 10 questions

Obstetrics & Gynaecology - 10 questions

ENT - 5 questions

Orthopaedics - 5 questions

Ophthalmology - 5 questions

Anaesthesia - 5 questions."

It is, however, material to note that at the beginning of this clause 6.5 it is stated that the common entrance test shall be of the standard of MBBS and shall cover the above referred subjects of MBBS course and shall also cover National Health Programme and Health Administration.

7. As far as fresh graduate students other than in-servicee candidates are concerned, they have to answer a paper of three and half hours containing 300 multiple choice questions as stated in clause 9.5 of their booklet. In clause 9.6 the tentative number of questions on each subject are given and they are as follows:-

"Anatomy - 15

Physiology - 15

Biochemistry - 15

Pharmacology - 20

Pathology - 25

Microbiology - 20

Forensic Medicine - 10

Medicine - 30

Social & Preventive Medicine - 25

Surgery - 22

Dermatology & Venereology - 7

ENT - 7

Orthopaedics - 10

Paediatrics - 15

Obstetrics - 14

Gynaecology - 6

Radio-diagnosis - 8

Radiotherapy - 4

Biophysics - 5

Ophthalmology - 10

Anaesthesia - 7

Psychiatry - 10"

8. Mr.Kumbhakoni, learned counsel for first respondent submitted that the in-service candidates have to work for their livelihood and during the course of service they have to prepare for this examination. The activity in which they are engaged, is therefore, given a weightage and

therefore, the National Health Programme will carry 50 questions, the Social and Preventive Medicine 30 questions and Health Administration 20 questions. He submits that as against that only Social & Preventive Medicine appears in the course of the fresh graduate candidates and which will carry 25 questions but National Health Programme and Health Administration do not figure therein. Mr.Kumbhakoni submits that the two examinations are designed separately and that should be permitted. Mr.Thorat, learned counsel appearing for in-service candidates supported contentions of Mr.Kumbhakoni and submitted that the questions which are set out as per the brochure, which is meant for the fresh graduate students, contain questions on subjects which were perhaps not taught when some of these in-service candidates completed their graduation. He, therefore, submitted that there is justification to hold separate examinations and that should be continued. Alternatively he submitted that in any case Court should not give any such direction to hold only one examination at least for this year since the examinations were round the corner. He pointed out that when CET was directed for the first time, the Apex Court had made an exception in its order recorded

in the case of State of Maharashtra Vs. Ravindra Kumar Rai {(1999)2-SCC-48}.

9. We have noted submissions of Mr.Vashi, Mr.Kumbhakoni and Mr.Thorat. As far as the difficulties of in-service candidates and necessity for separate examinations is concerned, these are all aspects which are already gone into by the Apex Court when the above matter between State of Madhya Pradesh and Gopal Tirthani was decided. The Apex Court heard all parties and considered all these submissions. The Apex Court has in clear terms laid down that there will be only one common entrance test for in-service candidates and those not in service. This judgement was rendered in July 2003. Nothing prevented the State Government and first respondent Directorate to take steps in the light of that judgement all this time. Having not taken the necessary steps, now the State Government has landed in the situation where the fresh graduate students are contending that the judgement ought to be implemented as it is whereas in-service candidates are raising their difficulties. This is a situation entirely created by the State Government and first

respondent. Having noted their difficulties, however, this Court cannot be a party to a decision which will be contrary to the directions given by the Apex Court. We can not make an exception for this year as sought by Mr.Thorat on the ground that the examination is now around the corner since the law in this behalf has already been declared by the Apex Court more than one and half year before. It is, therefore, not possible to accept submissions of Mr.Kumbhakoni and Mr.Thorat that two separate examinations should be permitted to be continued.

10. There is one more aspect of this matter. Mr.Vashi has rightly drawn our attention to the regulations on Graduate Education published by the Medical Council of India. They are published way back on 4th March 1997. The papers which one has to take while passing MBBS examination, are detailed in these regulations. What we find is that the brochure published by the State Government for the fresh graduate candidates contains these very subjects which are required by the Medical Council of India for passing MBBS examination. The Post Graduation admissions have to be on the basis of one’s capability decided on the basis of knowledge obtained in these papers.

However, as far as in-service candidates are concerned, out of 200 questions, 70 questions are to be on National Health Programme and Health Administration. We have our grave doubts as to whether any such major departure can be permitted from the course which the students otherwise undertake at the MBBS level.

11. Having noted these difficulties Mr.Kumbhakoni, learned counsel for first respondent has filed an additional affidavit affirmed today i.e. 25th January 2005. It is suggested in this affidavit that though the State Government has it’s own justification for holding two separate examinations, the State Government, will without prejudice to it’s submission, permit the in-service candidates to appear for the examination which is to be held on 30th January 2005 which is to be held for the fresh graduate students. We have noted the eligibility criteria as per the notification published on 23rd November 2004. The in-service candidates certainly fulfil this eligibility criteria. Mr.Kumbhakoni, therefore, submitted that the State Government will permit the in-service candidates to appear on 30th January 2005 and simultaneously represent to the Central

Government and/or to the Medical Council of India to permit a separate examination for the in-service candidates. This submission is made on the basis of liberty granted by the Apex Court in later part of para 26 of the above referred judgement. This para reads as follows:-

> "26. The Medical Council of India, for the present, insists, through its Regulations, on a common entrance test being conducted whereat the minimum qualifying marks would be 50%. The State of Madhya Pradesh must comply with the requirements of the Regulations framed by the Medical Council of India and hold a common entrance test even if there are two separate channels of entry and allow clearance only to such candidates who secure the minimum qualifying marks as prescribed by the MCI Regulations. If the State has a case for making a departure from such rule or for carving out an exception in favour of any classification then it is for the State to represent to the Central Government and/or the Medical Council of India and make out a case of justification consistently with the aforequoted observation of this Court in Dayanand Medical College and Hospital Case."

It is further stated in this affidavit that in the event the separate examination is permitted by Central Government and/or Medical Council of India, the results of the in-service candidates who would appear for the separate examination which is to be held on 6th February 2005, will be declared. In the event such a permission is not

granted, there is no question of declaring such results and the examination will be null and void.

12. A request was made that though in this fashion the in-service candidates are to be permitted to appear for the examination on 30th January 2005, the time available for them for preparation is rather too short. This being the position, we asked Mr.Kumbhakoni as to whether this examination could be postponed in any manner. Mr.Kumbhakoni has pointed out that in a recent judgement rendered by the Apex Court on 12th January 2005 in the case of **Mridual Dhar Vs. Union of India**, certain mandatory directions with respect to the time table of these examinations are given and in view of those mandatory directions as well as difficulty in arranging various examinations, it is not possible to postpone the examination in any manner whatsoever.

13. This being the position, we allow this petition by declaring that separate examination to be held on 6th February 2005 by the first respondent for the in-service candidates will not be considered as a valid examination unless the

first respondent obtains clearance from the Central Government and/or Medical Council of India in terms of paragraph 26 of the judgement of Apex Court in the case of State of Madhya Pradesh and others Vs. Gopal Tirthani and other. As stated by the Director of Medical Education in his affidavit, it will be open for the State Government to apply to the aforesaid authorities and to obtain clearance, if the authorities so deem it fit. The result of the examination to be held on 30th January 2005 was to be declared by the 15th February 2005. Now it will be declared by 25th February 2005 by which date the approval of Central Government will be sought. In the mean while, as stated by the Director of Medical Education in his affidavit, it will also be open for the State Government to permit in-service candidates to appear for the examination to be held on 30th January 2005. They may as well appear at the separate examination to be held by the State Government on 6th February 2005, however, the result thereof will not be declared unless clearance is obtained from the Central Government and/or Medical Council of India. In the event no such clearance is obtained, the examination will be null and void and no result thereof will be declared. It is further declared

that in the event the examination is declared to be valid and some surplus seats emerge therefrom those seats as per the normal practice will be made available to the fresh graduate candidates.

14. As far as common entrance test to be held on 30th January 2005 is concerned, the State Government will prepare separate merit list for in-service candidates and graduate candidates mark-wise. The Rule of 25% quota for the in-service candidates will apply to this common entrance test also. In the event any surplus seat/s remain after in-service candidates are absorbed, they shall become available to the open category candidates.

15. Mr.Kumbhakoni has made a further statement on instructions of respondent no.1 that necessary advertisements will be given in the news papers to inform the in-service candidates and telegrams will also be sent to in-service candidates informing them if they so deem fit, they will be allowed to appear for the common entrance test to be held on 30th January 2005 and that as usual they are expected to appear at the centre in Mumbai.

16. With this order the petition stands disposed of.

(H.L.GOKHALE, J.)

(S.C.DHARMADHIKARI, J.)